

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ROBERT OGLETREE,)	
)	
Petitioner,)	
v.)	Civil Action
)	No. 09-3472-CV-S-ODS-H
MARTY ANDERSON, Warden,)	
United States Medical Center for)	
Federal Prisoners,)	
)	
Respondent.)	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Petitioner, an inmate confined in the United States Medical Center for Federal Prisoners, petitions this Court for a writ of habeas corpus. The petition has been referred to the undersigned for preliminary review under 28 U.S.C. § 636(b). Because petitioner has failed to exhaust administrative remedies, it will be recommended that he be denied leave to proceed in forma pauperis.

After a Show Cause Order was entered, the United States filed its response. Counsel for petitioner filed a Motion to Withdraw. Thereafter, petitioner was granted an opportunity to file a pro se traverse, which he did not do. Petitioner contended in his original petition that he has been denied early release as a result of his participation in the Residential Drug Abuse Treatment Program [“RDAP”] at the Medical Center.

The files and records in this case establish that petitioner is lawfully in the custody of the Bureau of Prisons. According to respondent, he did not complete the third portion of the RDAP, because suitable arrangements for community confinement could not be established. His projected

release date in July 31, 2010. The Attorney-Advisor at the Medical Center has provided an affidavit that petitioner has failed to exhaust available administrative remedies. [Respondent's Exhibit 5].

A review of the record indicates that petitioner has not exhausted all available administrative remedies. It is well-settled law that an inmate must exhaust administrative remedies prior to seeking habeas corpus relief. See Leighnor v. Turner, 884 F.2d 385 (8th Cir. 1989); Willis v. Ciccone, 506 F.2d 1011 (8th Cir. 1974).

Because petitioner has failed to exhaust administrative remedies regarding the RDAP program, it must be recommended that the petition for writ of habeas corpus be dismissed without prejudice.

Counsel for the petitioner has filed a Motion to Withdraw. Because there are no issues presented for which relief is appropriate, the motion is granted.¹

For the foregoing reasons, it is, pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri,

RECOMMENDED that petitioner be denied leave to proceed in forma pauperis, and that the petition herein for writ of habeas corpus be dismissed without prejudice.

/s/ James C. England
JAMES C. ENGLAND, Chief
United States Magistrate
Judge

Date: 3/23/10

¹ Petitioner has 14 days to file exceptions to the Report and Recommendation of the United States Magistrate Judge.